

LFC Requester:**Julia Downs****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Date** January 28, 2016**Original** X **Amendment** **Bill No:** HB 260**Correction** **Substitute**

Reps. Nate Gentry & Stephanie Garcia Richard

Sponsor: & Sen. George Munoz**Agency Code:** 305**Short** Public Corruption Offenses**Person Writing** AAG Jennifer Armijo Hughes**Title:** And Penalties**Phone:** 222-9000 **Email** jhughes@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 155; HB 96
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 260 is an anti-corruption legislation that amends various criminal statutes to increase the penalties for certain public corruption offenses, bars persons convicted of public corruption offenses from lobbying or entering into contracts with the state, and provides for the forfeiture of benefits under the state retirement system upon conviction of public corruption offenses.

Sections 1, 2, 3, and 4 specifically add Section 14 of HB 260 to Section 10-11 NMSA 1978 (Retirement of Public Officers and Employees), Section 10-12B NMSA 1978 (Judicial Retirement), Section 10-12C NMSA 1978 (Magistrate Retirement) and Section 22-11 NMSA 1978 (Educational Retirement), respectively, providing for the forfeiture of certain rights and benefits under the state retirement systems upon conviction of public corruption offenses.

The first increased penalty includes increasing the basic sentence of imprisonment by one year, when certain crimes are committed by a person elected, appointed to a position, or employed by a public entity or when a person is convicted of having an unlawful interest in a public contract, where the value received is more than \$50, or demanding or receiving a bribe by a public officer or employee.

The second increased penalty includes being barred from being a lobbyist or contracting with a public entity, which includes the state or one of its agencies, departments, institutions or political subdivisions if convicted under this section. It makes it a 3rd degree felony to willfully violate this provision.

To trigger the enhancement for embezzlement, the thing embezzled or converted must be valued at more than \$500. To trigger the lobbying and contract bar for unlawful interest in a public contract, the value received by a person must be more than \$50.

These crimes included are embezzlement (30-16-8), paying or receiving public money for services not rendered (30-23-2), making or permitting a false public voucher (30-23-3), unlawful interest in a public contract (30-23-6), bribery of a public officer or employee (30-24-1), demanding or receiving a bribe by a public officer or employee (30-24-2), soliciting or receiving illegal kickback (30-41-1), and offering or paying an illegal kickback (30-41-2).

HB 260 defines "public entity" as the state or one of its agencies, departments, institutions or

political subdivisions. It includes this definition within each of the above enumerated crimes. HB 260 adds the definition of “kickback” to Section 30-41-1 and Section 30-41-2.

Section 13 of HB 260 requires every state agency, department, political subdivision and institution to post notice of public corruption offenses and their penalties. The list of public corruption offenses in this section includes violating the ethical principles of public service (10-16-3), taking an official act for personal financial interest (10-16-4), embezzlement (30-16-8), paying or receiving public money for services not rendered (30-23-2), making or permitting a false public voucher (30-23-3), unlawful interest in a public contract (30-23-6), bribery of a public officer or employee (30-24-1), demanding or receiving a bribe by a public officer or employee (30-24-2), tampering with public records (30-26-1), soliciting or receiving illegal kickback (30-41-1), and offering or paying an illegal kickback (30-41-2).

Section 14 provides for the forfeiture of pension for public corruption offenses by allowing the district attorney or attorney general to file an ancillary claim for forfeiture of pension, in addition to a felony complaint, if the defendant is a member or retired member and is being adjudicated in district court for a public corruption offense that arises out of or is in connection to the member’s public office or public employment. This shall be brought in the same proceeding as the criminal matter to the same trier of fact, provided that it is bifurcated and that the rules of civil procedure apply in the forfeiture proceeding. The state must prove by clear and convincing evidence and after determining issues related to community property and child support obligations, the court may order the forfeiture of some or all of the member’s right to a pension and other retirement benefits. The act specifies that amount of pension that can be forfeited. This section specifies that the provisions of section apply to pensions earned on or after July 1, 2012 but that it does not apply to pensions related to previous employment if the public corruption offense did not arise from conduct related to the previous employment.

Section 15 states that the effective date of the act is July 1, 2016.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As written, HB 250 will conflict with HB 155 since both are establishing public corruption offenses but provide for different penalties.

Additionally, HB 93 is related HB 155 to the extent that it deals with forfeiture of the pensions of convicted public officials.

TECHNICAL ISSUES

Section 12. HB 260 amends NMSA 1978, Section 30-41-1, which defines the crime of

“Soliciting or Receiving an Illegal Kickback.” The bill adds a new subsection “D,” which includes a definition of the term “kickback” for purposes of the provision. Adding the definition might cause some confusion or ambiguity regarding the applicability of the provision. Currently the crime of soliciting or receiving an illegal kickback includes soliciting or receiving “a remuneration in the form of any kickback, bribe or rebate....” In this context, the term “kickback” as used in the provision encompasses kickbacks, bribes and rebates, all of which are generally understood to more or less refer to, and are sometimes interpreted to mean, the same type of activity. Giving the term “kickback” a specific definition may allow an interpretation of the prohibition that essentially reads the terms “bribe” and “rebate” out of the statute. It might be preferable to omit the definition of “kickback” and allow it to continue to be interpreted consistent with its usual and common sense usage, along with the terms “bribe” and “rebate.” This would facilitate the statute’s application to a wider range of kickbacks and kickback-like activity.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

See discussion above under “Technical Issues.”